

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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CHARLES J. SMITH,

Plaintiff,

-v-

9:20-CV-659

BRIAN SULLIVAN *et al.*,

Defendants.

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APPEARANCES:

OF COUNSEL:

CHARLES J. SMITH

Plaintiff, Pro Se

96-A-6765

Gouverneur Correctional Facility

Scotch Settlement Road

P.O. Box 480

Gouverneur, NY 13642

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LYNN MARIE KNAPP, ESQ.

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Ass't Attorneys General

DAVID N. HURD

United States District Judge

**ORDER ON REPORT & RECOMMENDATION**

On June 12, 2020, *pro se* plaintiff Charles J. Smith (“plaintiff”), then an inmate in the custody of the New York State Department of Corrections and Community Supervision (“DOCCS”) at Greene Correctional Facility, filed this 42 U.S.C. § 1983 action alleging that corrections officials and others violated his rights under the U.S. Constitution and state law. Dkt. No. 1. Along with his complaint, plaintiff also sought leave to proceed *in forma pauperis* (“IFP Application”). Dkt. Nos. 2, 3.

On July 30, 2020, this Court granted plaintiff’s IFP Application, conducted an initial review of the pleading, dismissed many of plaintiff’s claims, and permitted a few others to proceed. Dkt. No. 4. Thereafter, plaintiff filed an amended complaint, Dkt. No. 8, which was reviewed for sufficiency and again permitted to proceed in part, Dkt. No. 9. And after some procedural disputes and a discovery hearing, plaintiff sought leave to further amend his pleading, Dkt. No. 38, which was granted in part and denied in part, Dkt. No. 49, and his second amended complaint was accepted for filing as modified by the Court’s Order, Dkt. No. 50. A period of discovery followed. Dkt. Nos. 57–115.

On November 22, 2022, defendants moved under Federal Rule of Civil Procedure (“Rule”) 56 for summary judgment on all of plaintiff’s remaining claims. Dkt. No. 119. Plaintiff opposed, Dkt. No. 125, and cross-moved for summary judgment in his own favor, Dkt. No. 124. Those motions were fully

briefed and the matter was referred to U.S. Magistrate Judge Christian F. Hummel. Dkt. Nos. 126–139. Thereafter, Judge Hummel advised by Report & Recommendation (“R&R”) that defendants’ motion be granted, plaintiff’s motion be denied, and plaintiff’s operative complaint be dismissed in its entirety with prejudice. Dkt. No. 140.

Plaintiff has not filed objections. Dkt. No. 140. The time period in which to do so has expired. *See id.* Upon review for clear error, the R&R is accepted and will be adopted in all respects. *See* FED. R. CIV. P. 72(b).

Therefore, it is

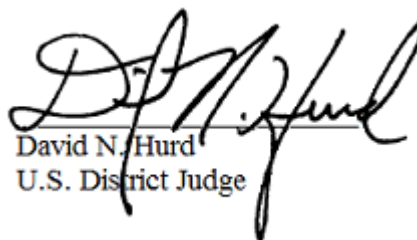
ORDERED that

1. The Report & Recommendation is ACCEPTED;
2. Defendants’ motion for summary judgment is GRANTED;
3. Plaintiff’s motion for summary judgment is DENIED; and
4. Plaintiff’s operative complaint is DISMISSED with prejudice.

The Clerk of the Court is directed to terminate the pending motions, enter a judgment accordingly, and close the file.

IT IS SO ORDERED.

Dated: May 30, 2023  
Utica, New York.

  
David N. Hurd  
U.S. District Judge